IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4409 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

R R PATEL

Appearance:

1. Special Civil Application No. 4409 of 1989

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik C. Raval for the petitioner corporation. The notice of rule issued by this court has been served upon the respondent but no one

has remained present on behalf of the respondent and no vakalatnama has been filed on his behalf.

In this petition, the petitioner has challenged the award passed by the labour court, Baroda in reference No. 38 of 1982 dated 3rd August, 1988 and at the time of issuing rule, interim relief in terms of para 11(b) on 27th December, 1990. Under the impugned award, the labour court has granted reinstatement in favour of the respondent workman without back wages for the intervening period while setting aside the impugned order of dismissal dated 18th May, 1977. Before the labour court, the petitioner corporation has not produced any inquiry papers and no evidence has been led by the corporation.

During the course of hearing, learned advocate Mr. Raval appearing for the petitioner has submitted that the charge levelled against the petitioner is serious in nature because when the respondent was on duty on 22nd December, 1975 in a bus on the route between Baroda and Nathdwara, during the night halt at Nathdwara, the respondent workman with one R.M. Panchal, conductor, took two women passengers in the bus in the Dharmashala and committed with them an act of adultery and on their way, they had altercation with the personnel of the Ratanpur Police Station and on the basis of the said charge, the respondent was dismissed from service. Not only that, he has also submitted that the criminal prosecution was lodged against the respondent wherein the respondent was convicted and was ordered to undergo the rigorous imprisonment of five years and fine of Rs.1200.00 was also imposed by the competent criminal court. He has submitted that these facts had come to the notice of the corporation and,therefore, same has not been produced before the labour court. He has also submitted that because of the negligence on the part of the advocate appearing for the petitioner before the labour court, papers of departmental inquiry were not produced before the labour court and in absence of such papers, the labour court has drawn conclusions for setting aside the order of dismissal. In view of these facts, he has submitted that an opportunity may be given to the petitioner corporation by way of remand to the concerned labour court so as to enable the petitioner to produce all necessary papers and lead the evidence before the labour court for justifying the order of punishment. He has also submitted that even as per the subsequent event of conviction dated 28th June, 1986, as per the service regulations of the corporation, the corporation is empowered to terminate the services of the workman only on the basis of conviction and, therefore, on both

the counts, the respondent workman is not entitled for reinstatement. He has also submitted that the criminal offence is serious one and is relating to moral turpitude.

Inspite of service of notice of rule issued by this court, the respondent has not appeared and has today remained absent and, therefore, considering the submissions made by the learned advocate Mr. Raval for the petitioner, according to my opinion, the matter is required to be remanded back to the labour court concerned by setting aside the award dated 3.8.1982 passed by the labour court in Reference No. 38 of 1982.

Accordingly, this petition is allowed. Award passed by the labour court, Baroda in reference No. 38 of 1982 dated 3rd August, 1988 is hereby quashed and set aside and the matter is remanded back to the Labour Court, Baroda with a direction to the labour court, Baroda to decide the reference No. 38 of 1982 a fresh in accordance with law while giving opportunity to both the parties in accordance with law and on merits. Rule is accordingly made absolute with no order as to costs.

10.1.2002. (H.K. Rathod,J.)

Vyas